## REMARKS

Entry of the foregoing and further and favorable reconsideration of the subject application in light of the following remarks pursuant to and consistent with 37 C.F.R. § 1.116, are respectfully requested.

By the present amendment, claims 30 and 31 have been amended to recite specific hybridization conditions. Support for this amendment may be found, for example, on page 19, lines 13-17, of the specification as filed. No new matter enters by this amendment.

The amendments are consistent with 37 C.F.R. § 1.116, in view of the fact that they place the application in condition for allowance, or at the very least reduce the issues for appeal. Entry is thus believed to be in order.

Initially, Applicants would like to thank the Examiner for his indication that claims 26-29 and 32-38 are allowable.

### Rejection of Claims 30-31 and 39-40 Under 35 U.S.C. § 112, First Paragraph

Claims 30-31 and 39-40 have been rejected under 35 U.S.C. § 112, first paragraph, for purportedly not being enabled by the specification as filed for the full scope of the claim. For at least all of the reasons set forth below, Applicants respectfully request withdrawal of this rejection.

By the present amendment, and in order to expedite prosecution of the above-identified application (and in no way acquiescing to the correctness of the Examiner's rejections), Applicants have amended claims 30 and 31 to recite specific hybridization conditions and to recite that the nucleic acid encodes a protein with tyrosine kinase

activity. It is believed that this amendment to the claims provides sufficient functional limitations for the nucleic acids encoding the variant polypeptides such that one of skill in the art, without undue experimentation, could identify which nucleic acids are encompassed by the claims. Specifically, it would not require undue experimentation to perform hybridization experiments (using the conditions set forth in claims 30 and 31) on candidate nucleic acids to determine which nucleic acids hybridize to SEQ ID NOS:4 or 8. Furthermore, it would not require undue experimentation to express this nucleic acid in a cell and test the resulting protein for tyrosine kinase activity (see page 85, line 20, to page 88, line 12, of the specification as filed for an exemplary method of testing for tyrosine kinase activity).

In light of the amendments and remarks, withdrawal of this rejection under 35 U.S.C. § 112, first paragraph, is believed to be in order and is respectfully requested.

**Rejection of Claims 30-31 and 39-40 Under 35 U.S.C. § 112, First Paragraph**

Claims 30-31 and 39-40 have been rejected under 35 U.S.C. § 112, first paragraph, for purportedly containing subject matter which was not described in the specification as filed. For at least all of the reasons set forth below, withdrawal of this rejection is believed to be in order.

As noted by the Examiner, a correlation between function and structure for the claimed invention is one acceptable approach to meet the written description requirement.

As noted above, claims 30 and 31 have been amended, in order to expedite prosecution, to recite specific, stringent hybridization conditions and to recite that the protein encoded by the nucleic acid has tyrosine kinase activity. It is well known in the

art that with higher stringency conditions for hybridization one obtains hybridization between nucleic acids having higher homologies. Thus, claims 30 and 31 clearly provide a correlation between function (tyrosine kinase activity for the expressed protein) and structure (the ability to hybridize under the conditions recited and thus high homology with SEQ ID NOS:4 and 8, respectively), and therefore these claims clearly meet the written description requirement.

In light of these remarks, withdrawal of this rejection under 35 U.S.C. § 112, first paragraph, is believed to be in order and is respectfully requested.

**Rejection of Claims 30-31 and 39-40 Under 35 U.S.C. § 112, Second Paragraph**

Claims 30-31 and 39-40 have been rejected under 35 U.S.C. § 112, second paragraph, for purportedly being indefinite. According to the Examiner, the claims are indefinite because the claimed nucleic acids could not have tyrosine kinase activity, but the encoded protein would. Furthermore, the Examiner purports that the term "stringent hybridization conditions" is a conditional term and renders the claim indefinite. For at least the reasons set forth below, withdrawal of this rejection under 35 U.S.C. § 112, second paragraph, is believed to be in order.

By the present amendment, and in order to expedite prosecution, claims 30 and 31 have been amended to recite that the nucleic acid encodes a protein which has tyrosine kinase activity. Furthermore, claims 30 and 31 have been amended, as the Examiner suggested, to recite specific stringent hybridization conditions. In light of these amendments to the claims, Applicants respectfully request withdrawal of this rejection under 35 U.S.C. § 112, second paragraph.

## CONCLUSION

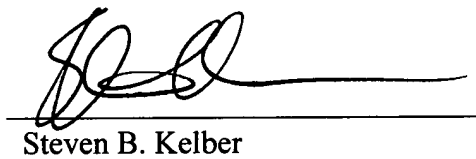
In light of the above, Applicants believe that this application is now in condition for allowance and therefore request favorable consideration.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

MERCHANT & GOULD P.C.

8/15/2005
Date



Steven B. Kelber
Registration No. 30,073
Attorney of Record

Dawn Gardner Krosnick
Registration No. 44,118

P.O. Box 2903
Minneapolis, Minnesota 55402-0903
Telephone No. 202-326-0300
Facsimile No. 202-326-0778

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